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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.3194 OF 2006

Nilkanth Tukaram Tapale — Appellant
versus
Gyanchand S. Choudhary
and another — Respondents

Mr.M.B.Kotak for appellant.
Mrs.A.B.Barve for respondent no.2.

CORAM : A.S.OKA, J.
DATE : 06th March 2007

JUDGEMENT :

1. Heard learned advocates appearing for the parties. The appellant is the claimant in a claim petition filed u/s 166 of the Motor Vehicles Act, 1966. The claim petition filed by the appellant has been partly allowed by the Tribunal by the judgement and award dated 16th August 2002. By the said judgement and award, the respondents were jointly and severally directed to pay compensation of Rs.10,600/- together with interest thereon @ 9% p.a. with effect from 1st February 1995 till realisation of the amount.

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2. The claim petition was filed in the year 1991. The date of accident is 23rd September 1991. According to the case of the appellant, he was participating in Ganpati Emersion Procession. The appellant at the relevant time was in a truck. According to the case of the appellant another truck came from behind and dashed against the truck in which he was travelling. The appellant suffered injury to his head and left ear. According to him there was a perforation in his left ear. He was hospitalised in Lokmanya Tilak Hospital at Sion for 16 days. According to his case he was unconscious for five days. After discharge from the hospital he was required to attend the hospital twice a week as a patient of out patient department for a period of six months. Insofar as issue regarding the negligence and liability of the respondents is concerned, it is not necessary go into the said aspects as there is no appeal preferred by the respondents and the respondents have accepted the award and have paid the compensation.

3. Shri Kotak appearing for the appellant submitted that considering the nature of the injuries sustained by the appellant, the compensation awarded is extremely on the lower

side. He invited my attention to the disability certificate issued by the Grant Medical College, J.J.Group of Government Hospitals. He submitted that the compensation of Rs.55,000/- ought to have been awarded. Learned advocate for second respondent submitted that the compensation awarded is just and proper and no interference was called for.

4. I have considered the submissions. The learned Member of the Tribunal has recorded a finding that as a result of the injury sustained in the accident there was perforation in the left ear of the appellant. The certificate produced on record issued by the Honorary Assistant Professor of Psychiatry, Grant Medical College, J.J.Government Hospital records that there was an organic brain damage due to road accident and permanent disability has been assessed at 70%.

5. A perusal of the examination-in-chief of the appellant shows that no claim has been made on account of loss of income or earning capacity. Considering the material on record and the disability certificate, the appellant was entitled to minimum compensation of Rs.25,000/- in view of mandate of law in Section 140 of the

Motor Vehicles Act, 1988. The learned Member of the Tribunal has allowed the expenditure for travelling as well as for special diet to the extent of Rs.5,600/-. Thus, the total amount of compensation payable to the appellant will be Rs.30,600/-.

6. The Tribunal has denied the interest to the appellant from the date of filing of the claim application and the interest has been awarded from 1st February 1995 on the ground that notices of the claim application were served on 27th January 1995. No finding has been recorded to the effect that due to default on the part of the appellant there was a delay in effecting service of notice. Therefore, in my opinion, mere delay in service of notice of the claim petition was not a ground to deny the interest on compensation. There is nothing on record to show that the delay was caused due to any default on the part of the appellant. Thus, the appellant is entitled to interest @ 9% p.a. from the date of filing of the claim petition. Hence, the appeal deserves to be partly allowed. Hence I pass the following order.

7. ORDER :-

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a) The operative part of the impugned judgement and award is modified and the modified operative order will read thus :-

"The claim application is partly allowed. The opposite party and the insurer are directed to jointly and severally pay compensation of Rs.30,600/- to the applicant together with interest thereon @ 9% p.a. from the date of filing of the claim petition till realisation;

The opposite party and the insurer shall also pay proportionate costs of the claim petition to the applicant";

b) Time of three months is granted to the respondents to comply with the modified award;

c) Respondents will be entitled to adjustment of the amounts which are already paid as per the impugned award dated 16th August 2003;

d) The appellant will be entitled to proportionate costs of this appeal from the respondents;

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e) The appeal is partly allowed in above terms.

(A.S.OKA, J.)